

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for the State Board  
of Medical Examiners

**FILED**

August 14, 2003

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

By: Mileidy Perez  
Deputy Attorney General  
Tel. (973)648-2500

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS

---

IN THE MATTER OF THE LICENSE OF

Giovanni Miclat Baula, M.D.  
License No. MA64279

Administrative Action

TO PRACTICE MEDICINE AND SURGERY  
IN THE STATE OF NEW JERSEY

CONSENT ORDER OF  
VOLUNTARY SURRENDER  
OF LICENSURE

:

---

This **matter was opened** to the New Jersey State Board of Medical Examiners upon receipt of information that on **October 4, 2002**, the Respondent entered into an Agreed Order with the Texas State Board of Medical Examiners ("Texas Board"). The **Agreed** Order provided that Respondent was subject to disciplinary action because he failed to practice medicine in **an acceptable** professional manner consistent with the public health and welfare. **The** Texas Board **determined** that Respondent prescribed Zenocal, an unscheduled medication for obesity, to a patient based on the **patient's** history

**CERTIFIED TRUE COPY**

and consultation performed via **an** internet communication only without completing a **physical examination of the patient**. Under the terms **of the Agreed Order Respondent was** assessed a monetary administrative penalty in the amount of five thousand **dollars** (\$5,000.00) and ordered to **complete** ten (10) **hours** of Continuing **Medical Education approved** for Category I credit **by** the American Medical Association **or** in Risk Management.

The above-described action by **the Texas** Board provides grounds to take disciplinary action against **Respondent's** license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(e). It **appearing** that **Respondent wishes** to resolve this matter without formal proceedings and ~~for~~ good cause shown,

ACCORDINGLY, IT IS on this 13<sup>th</sup> day of August, 2003, HEREBY ORDERED AND AGREED THAT:

1. Respondent's license to practice medicine in **the** State of New Jersey be and hereby is voluntarily surrendered for a period of five (5) years from the entry of this Order, without prejudice to **Respondent's ability** to apply for reinstatement after the five (5) years have lapsed.

2. **In the** event that Respondent seeks reinstatement of **his** New Jersey license to practice medicine **and** surgery after five (5) years have **lapsed** from **the** entry of this Order, **Respondent shall be required** to appear before the Board (or a committee thereof) to demonstrate his *fitness* to resume practice: Any practice in this **State** prior to reinstatement shall constitute grounds for a charge

K-3088

IN THE MATTER OF

THE LICENSE OF

GIOVANNI M. BAULA, M.D.

§  
§  
§  
§  
§

BEFORE THE

TEXAS STATE BOARD

OF MEDICAL EXAMINERS

AGREED ORDER

On this the 4 day of October 2002, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session the matter of the license of GIOVANNI M. BAULA, M.D. ("Respondent"). On June 21, 2002, Respondent appeared in person with counsel, Susan Henricks, at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board. Victoria White represented Board Staff.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by David E. Garza, member of the Board and Irwin Zeitler, member of DPRC. Upon recommendation of the Board's representatives, and with the consent of Respondent, the Board makes the following findings of fact and conclusions of law and enters this Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Giovanni M. Baula, M.D., holds Texas medical license K-3088.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice that may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under TEX. OCC. CODE ANN. Subtitle B (Vernon 2000) (hereinafter the "Act"). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice or hearing under the Act; TEX. GOV'T CODE **ANT.** §§2001.051 through .054; and the Rules of the State Board of Medical Examiners (22 TEX. ADMIN. CODE Chapter 187).
3. Respondent is thirty-five (35) years of age.
4. Respondent is a Board certified in Internal Medicine and practices in a multi-specialty group.

5. The Respondent currently practices medicine in the state of Florida.
6. The Respondent has been licensed to practice medicine by the Board since 1997.
7. The Board filed this complaint upon receipt of information that the Respondent prescribed Zenocal, an un-scheduled medication for obesity to a patient, "JR" based on patient history and consultation performed by internet communication only.
8. No physical examination was completed. in making the diagnosis of obesity, before prescribing Zenocal to "JR".
9. The Respondent reported that he immediately refrained from providing diagnostic consultations without performing a physical examination as soon as he was actually aware of the Board's Internet Prescribing Policy which states that an "on-line or telephone evaluation by questionnaire is inadequate to establish a proper physician-patient relationship."
10. Respondent has cooperated with the Board Staff in the investigation of the allegations related to this Agreed Order.

### CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Respondent is subject to disciplinary action pursuant to Section 164.051(a)(1) of the Act by failing to practice medicine in an acceptable professional manner consistent with the public health and welfare.
2. Sections 165.001 and 165.003 of the Act authorize the Board to impose a monetary administrative penalty nor to exceed five thousand dollars (\$5,000.00) for each separate violation of the Act or Board rule by a person licensed or regulated under the Act.
3. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.
4. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

### ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

1. Respondent shall pay an administrative penalty in the amount of FIVE THOUSAND dollars (\$5,000.00) within sixty (60) days of the signing of this Order by the presiding officer of the Board.
2. Within one year (1) from the entry of this Agreed Order, Respondent shall obtain ten (10) hours of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or in Risk Management. Upon completion of the required CME, Respondent shall submit proof to the Board of successful completion of the CME. A copy of attendance certificates issued or a detailed report, which can be readily verified by the Board shall satisfy this requirement.
3. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas State Board of Medical Examiners and shall be submitted to the Director of Compliance for the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund.
4. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board as provided for in the Act, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.
5. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.
6. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) days of the address change. This information shall be submitted to the Verification Department and the Director of Compliance for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.
7. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to

injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

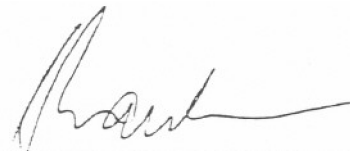
8. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to cooperate as required by this paragraph and the terms of this Order shall constitute a basis for disciplinary action against Respondent pursuant to the Act.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, GIOVANNI M. BAULA, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: SEPT 24, 2002.

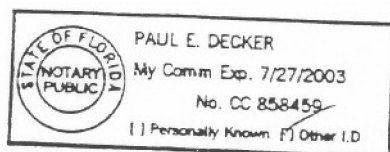
  
\_\_\_\_\_  
GIOVANNI M. BAULA, M.D.  
RESPONDENT

STATE OF FLORIDA  
COUNTY OF PINELLAS

§  
§  
§

BEFORE ME, the undersigned Notary Public, on this day personally appeared GIOVANNI M. BAULA, M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 24 day of SEP, 2002.



(Notary Seal)

Signature of Notary Public

PAUL E. DECKER

Printed or typed name of Notary Public

My commission expires: 7/27/2003

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 14 day of October 2002.

Lee S. Anderson, President

Texas State Board of Medical Examiners

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)



A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

**general** circulation in the geographic vicinity in which the **practice was** conducted. **At the end** of the three month period, the **licensee shall file with** the Board the name and **telephone number** of the contact person who will **have access** to medical records of former patients. Any **change** in that individual or his/her telephone number **shall be promptly reported** to the Board. **When** a patient or his/her representative requests a copy of his/her medical record or **asks** that **record be forwarded** to another health care provider, the licensee **shall** promptly **provide the** record without charge to **the** patient.

## **5. Probation/Monitoring Conditions**

With respect to **any** licensee who **is the** subject of any **Order imposing a** probation or monitoring requirement **or** a stay of **an active suspension, in whole or in part, which is** conditioned upon compliance **with** a probation or monitoring requirement, the **licensee shall** fully cooperate with the Board and its **designated** representatives, including the Enforcement Bureau of the Division of **Consumer** Affairs, in ongoing monitoring of the **licensee's status and** practice. Such monitoring shall **be** at the expense of **the** disciplined practitioner.

(a) Monitoring of practice conditions may include, **but is** not limited to, inspection of the professional **premises and equipment**, and inspection and copying of patient **records** (confidentiality of patient identity shall be **protected** by the Board) to verify compliance with the Board Order **and accepted** standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, **but is** not **limited** to, practitioner cooperation in providing **releases** permitting unrestricted access to **records** and other information to the extent **permitted by law** from any treatment facility, other treating practitioner, **support** group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained **by** a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate **by** responding to a demand for breath, **blood**, urine or other sample in a timely manner and providing the designated sample.

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number: \_\_\_\_\_

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> Pursuant to 45 CFR–Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**NOTICE OF REPORTING PRACTICES OF BOARD**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all **orders of the New Jersey State Board of Medical Examiners** are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of **the existence of the order and a copy** will be provided if requested. All evidentiary hearings, **proceedings on motions or other applications** which are **conducted as public hearings and the record**, including the transcript and **documents marked in evidence**, are available for public inspection, upon request.

Pursuant to 45 **CFR** Subtitle A 60.8, the **Board is obligated to report** to the National Practitioners Data Bank any **action** relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,**
- (2) Which censures, reprimands or places on probation,**
- (3) Under which a license is surrendered.**

Pursuant to **45 CFR Section 61.7**, the Board **is** obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any **formal** or official actions, such as revocation or suspension of a license (and the length of any such suspension), **reprimand, censure or probation or any other loss** of license or the right to apply for, or renew, a **license of the provider**, supplier, or practitioner, whether by operation of law, voluntary surrender, **non-renewability**, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available **information**.

Pursuant to N.J.S.A. 45:9-19.13, if the Board **refuses** to issue, suspends, revokes or **otherwise places** conditions on a license or permit, it is obligated to notify each licensed health **care** facility and health maintenance organization with which a licensee is affiliated **and every** other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with **the** Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly **basis**.

Within the month following entry of an **order**, a summary of the order will appear on the public agenda for the **next** monthly Board meeting and is **forwarded** to those members of the public requesting a copy. **In** addition, the **same** summary will appear in the minutes of that Board meeting, which are also **made** available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is **made** available to those **members** of the public requesting a copy.

On a periodic **basis** the Board disseminates to its licensees a newsletter which includes a brief description of all **of the** orders **entered** by the Board.

From time to time, the Press Office of **the** Division of Consumer Affairs may **issue** releases **including** the summaries of the content of public orders.

Nothing herein is intended in any way to limit the **Board**, the Division or the Attorney General from disclosing any public document.